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Fifty-seventh session

SUMMARY RECORD OF THE 1504th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 July 1996, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

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GE.96-17199 (E)

The meeting was called to order to 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial report of Nigeria (CCPR/C/92/Add.1)

1. At the invitation of the Chairman, Mr. Yadudu, Mr. Usman, Mr. Abuah, Mr. Coomassie, Mr. Rasheed, Mr. Mohammed, Mr. Nwokedi, Mr. Tabiu, Mr. Al-Arabi, Mr. Ekpu, Mr. Sulaiman and Mrs. Kwaku (Nigeria) took places at the Committee table.

2. The CHAIRMAN, called upon the Committee to resume consideration of the initial report of Nigeria, which it had begun at the fifty-sixth session, but had not been able to complete for lack of time.

3. He invited the head of the Nigerian delegation to refer to his introductory statement not only to questions raised in section II of the list of issues (M/CCPR/C/56/LST/N19/2), but also to any action taken in response to the urgent recommendations made by the Committee on issues discussed earlier under section I. The Committee also awaited with interest the delegation's comments on the matter raised in his letter dated 4 June 1996 to the Permanent Representative of Nigeria to the United Nations Office at Geneva, concerning the claim that representatives of the Civil Liberties Organisation, a Lagos-based non-governmental body, had been prevented from attending the Committee's fifty-sixth session.

4. Mr. YADUDU (Nigeria) pointed out that in addition to the official delegation of five government representatives, members of the newly-constituted National Human Rights Commission (NHRC) were also present: that was surely a further indication of the commitment to human rights which Nigeria had already demonstrated on many occasions, and most notably by the incorporation into its domestic legislation of the provisions of the African Charter on Human and Peoples' Rights. He provided some examples of the wide-ranging powers vested in the NHRC, which would be able to investigate all cases of human rights violations referred to it and recommend remedies, including prosecution and payment of compensation; encourage dialogue between the Government and NGOs; inform the public about human rights issues; cooperate with local and international NGOs; and publish reports on its activities and findings. The Government and people of Nigeria held the Human Rights Committee in high regard, setting great store by any suggestions and recommendations which it might proffer in the exercise of its powers under article 40 of the Covenant.

5. Summarizing the urgent recommendations adopted by the Committee in the light of its examination of the first part of Nigeria's initial report, as set out in document CCPR/C/79/Add.64, he reminded the Committee that while pledging at the time his country's full cooperation and willingness to consider the implementation of any recommendations he might make, he had advocated the avoidance of precipitate action pending the outcome of the fact-finding mission sent to Nigeria, at the Government's request, by the Secretary-General of the United Nations. Following publication of the mission's report, as an annex to document A/50/960, an interim response (also

annexed to that document) had been addressed to the Secretary-General on behalf of the Head of State of Nigeria, promising to amend several decrees pertaining to the Civil Disturbances Tribunal so as to exclude members of the armed forces from serving on that body and to make its verdicts and sentences subject to appeal. The undertaking had also been given to restore the writ of habeas corpus to persons detained under Decree No. 2 of 1984; to undertake an immediate review of the cases of all persons currently held without trial under that decree; and to direct the Oil and Mineral Producing Areas Development Commission (OMPADEC) to "look into whether there are peculiar ecological and environmental problems in the Ogoni area with a view to ameliorating them". He was pleased to state that all the promises made to the Secretary-General in the interim response had been fulfilled. The Government had, moreover, expressed its willingness to pursue the constructive dialogue under the good offices of the Secretary-General.

6. Concerning other aspects of the recommendations by the Human Rights Committee which had not been acted upon, he could only urge its members to note that some of the decrees recommended for abrogation pre-dated Nigeria's accession to the Covenant; that the process of legislative reform normally took time and that some of the decrees were historically a necessary feature of military rule, but were invariably abrogated and could thus be expected to disappear with the return of civilian democratic rule on or before 1 October 1998.

7. He then turned to the questions raised in section II of the list of issues on the constitutional and legal framework within which the Covenant was implemented in Nigeria, with special reference to articles 2, 3, 4, 10, 18, 19, 21, 22, 25 and 27.

8. Referring to his preliminary remarks at the fifty-sixth session, he pointed out that virtually all the rights recognized under the Covenant were enshrined in the 1979 Constitution, as amended, and were enforceable with its full backing. Similarly, with the adoption of the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act) (CCPR/C/92/Add.1, para. 5) many of the rights recognized under the Covenant had received the stamp of domestic law. He had already underlined the importance of the National Human Rights Commission, which would certainly welcome assistance from and collaboration with the United Nations Centre for Human Rights and other bodies active in the domain of human rights. He was not aware of any cases in which the provisions of the Covenant had been mentioned in judicial decisions but the African Charter might now be well on the way to becoming an integral part of Nigerian human rights jurisprudence.

9. As to whether any steps had been taken to disseminate information on the rights recognized in the Covenant in the languages spoken in Nigeria, he explained that there were more than 250 such languages, which made it impracticable. To select any of the three dominant languages might be seen as discriminatory. On the other hand, the rights recognized under the Covenant and protected under both the Constitution and the African Charter on Human and Peoples' Rights were actively promoted in English, Nigeria's official language. Some translation of the Universal Declaration on Human Rights into

local languages had been done as part of the fiftieth anniversary celebrations of the United Nations. It was to be hoped that the National Human Rights Commission would take such activities further.

10. Concerning factors or difficulties affecting the implementation of the Covenant, he referred successively to the difficulty of reconciling some existing laws, which predated Nigeria's accession to the Covenant, with obligations under its provisions; to excessive, often uncritical reliance by the Human Rights Committee on reports and evidence from unreliable or self-serving and politically-motivated sources as a basis for assessing compliance with the Covenant; to the pressures exerted on the country's limited resources by the demand for frequent periodic reports; and to the problem of credibility posed by the perception of the Human Rights Committee as being over critical of the implementation records of developing countries, and over lenient where the failings of developed countries were concerned.

11. In response to the question on measures taken to ensure gender equality and promote the participation of women at all levels of the political, economic and social life of the country, he listed a series of measures to illustrate Nigeria's positive record in that regard, covering such matters as equal pay, soft loans to promote rural women's self-employment, gender representation at all levels of government and support for women's NGOs.

12. In reply to the questions on available safeguards and remedies in time of emergency, he pointed out that no state of emergency had been declared in Nigeria since its accession to the Covenant and that the relevant paragraphs of the report were merely intended to provide information on procedures that must be followed under the 1979 Constitution were such an event to occur.

13. In the matter of compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Rules themselves recognised that not all their provisions could be fully applied in all places and at all times. For its part, Nigeria had established prison regulations which were followed in large measure in practice and which, given the country's capabilities, could be considered similar to the standards set by the United Nations.

14. Concerning the freedoms of conscience, expression, assembly and association, he confirmed that their enjoyment was qualified only to the extent permitted by law in the interests of defence and public safety, order, morality and health.

15. Concerning the question on the alleged impact of the prevailing violence within the country on the enjoyment by members of minority groups of their rights under article 27 of the Covenant, he said that the Government was not aware of any such violence limiting the enjoyment of rights by any of the country's 250 ethnic and linguistic groups, the rights of which were spelt out and protected under the 1979 Constitution. Nor was the Government aware of any complaint by any ethnic group of the infringement of its rights and privileges.

16. After assuring members of the Committee that his delegation was willing to provide any further clarifications which might be called for in connection with the list of issues, he turned to the matter raised in the letter

addressed on 6 June 1996 by the Chairman of the Committee to the Permanent Representative of Nigeria to the United Nations Office at Geneva. According to that letter, certain officials of the Civil Liberties Organisation had been prevented by the national authorities from leaving the country to attend the fifty-sixth session of the Committee in New York. He was unaware of any incident whatsoever, on any occasion, whereby Nigerian representatives of non-governmental organizations had been prevented from attending sessions of human rights bodies, or indeed any meeting held under the auspices of the United Nations; the allegation was nevertheless being investigated. It was not unknown for non-governmental organizations to seek from time to time to raise the political temperature in such gatherings or to bring pressure to bear on States in attempts to attract sympathy for their concerns.

17. The CHAIRMAN invited comments by members of the Committee on the Nigerian delegation's reply to questions raised in section II of the list of issues and on action taken pursuant to the recommendations made by the Committee on issues examined under section I.

18. Mr. BHAGWATI said he was pleased that the Nigerian Government had taken interim measures in response to the recommendations of the Committee and the United Nations fact-finding mission to Nigeria. The Committee's questions and comments were intended only to help States parties to improve their record in the field of human rights. Coming from a developing country himself, he could not agree that the Committee was exceptionally critical of such countries.

19. Mr. YADUDU had stated that, in response to the recommendations of the fact-finding mission, the Nigerian Government had excluded members of the armed forces from serving on the special tribunal and had established an appeals tribunal. He asked who had the right to make such appeals and what the composition of the appeals tribunal was. He wondered what procedure was followed by the panel constituted to review all cases of detainees, whether there was a time limit for reviewing cases, what the composition of the panel was, what its powers were, and whether its recommendations were binding on the Government. The representative of Nigeria had stated that some of the decrees which the Committee had recommended for abrogation predated Nigeria's accession to the Covenant. However, most of them dated from 1994, which was subsequent to its accession.

20. He asked what mechanism existed for enforcing the provisions of the Covenant; they were reproduced almost verbatim in the 1979 Constitution, but Decree No. 12 of 1994 established that the courts were precluded from inquiring whether any act committed pursuant to a law infringed any fundamental right and gave the courts no power to declare any decree unconstitutional. Decree No. 107 of 1993 made the Constitution subject to that decree and to all others issued before or after it. He asked whether those decrees were still in force and, if so, how it was possible to ensure conformity with the Covenant. Decree No. 2 of 1984 had been repealed to the extent that the right of habeas corpus was restored; he asked whether there were any remaining limitations on that right.

21. The Committee had received information from a number of non-governmental organizations (NGOs) regarding arrests and detentions. Chief Gani Fawaehinmi of the National Conscience Party had been detained since January 1996 without

being charged and, despite his fragile health, had not been permitted to see a doctor or to receive medicine, and Femi Falana, President of the National Association of Democratic Lawyers, had been detained since February 1996. He asked whether it was true that those tried under the Treason and Other Offences (Special Military Tribunal) Decree were not entitled to counsel of their choice but were assigned military lawyers.

22. With regard to article 19 of the Covenant, on freedom of expression, decrees Nos. 6, 7 and 8 of 1994 suspended the Concord, Punch and Guardian newspaper groups on the grounds of incitement against the Government; he asked what acts of incitement had been committed. He found it surprising that the interests of the Government were equated with those of the State, since incitement against the Government was not necessarily incitement against the State and the two might not have the same interests. He mentioned a number of cases of journalists who had been detained or deported and publications which had been impounded by the Government.

23. With regard to paragraph 189 of the report, he asked whether the Government, the State or the judges were responsible for determining whether State security was at risk and whether the decisions of the Government on such matters were final.

24. Mr. KLEIN said it appeared that the possibility of exercising human rights under the Covenant was completely dependent on the current situation in Nigeria. All human rights in that country could be suspended or made subject to any government decree, even in the absence of proclamation of an emergency situation. There was a Constitution, but many of its provisions were suspended and others were under threat of modification by decrees which could be issued at any time, a fact which created a climate hostile to respect for human rights.

25. Mr. Yadudu had stated that the National Human Rights Commission had begun its work of harmonizing the activities of NGOs. He wondered whether it was possible for a State body to carry out that task without hindering the activities of the NGOs, which ought to be free from supervision by any State authority. The Chairman's letter to the Permanent Representative of Nigeria stated that members of NGOs had been prevented from attending the Committee's fifty-sixth session, and there had been many other cases where their passports had been impounded. He found the Nigerian delegation's response to that letter unsatisfactory and assured the delegation that the Committee was at no risk of being unduly influenced by NGOs.

26. Paragraph 61 of the report of the fact-finding mission (A/50/960) had stated that the press in Nigeria was "vigorous and alert"; however, the report also spoke of frequent intimidation of journalists. He would encourage the Government to put an end to that practice as a step towards the development of a democratic society.

27. Paragraph 88 of the report referred to the deportation of aliens. While such deportations were permitted under the Covenant, he wondered whether there were any legal norms to ensure humane treatment during the process.

28. Mr. KRETZMER said that he shared the concerns of Mr. Bhagwati and Mr. Klein. In particular, he was taken aback by Mr. Yadudu's statement that there was a general perception in Nigeria that the Committee was unfair to developing countries, particularly as a number of representatives of developed countries had claimed the reverse.

29. He was not satisfied with Mr. Yadudu's explanation of the situation referred to in the Chairman's letter concerning members of the Civil Liberties Organisation. He requested information on the current whereabouts of the people mentioned in that letter, since the Committee had received information that they might wish to attend its current session but be unable to do so.

30. The Committee had asked for information on restrictions of the right to freedom of association in both law and practice, but had received information only on the law. It appeared that there was a pattern of harassment of members of human rights organizations, a fact which violated articles 9 and 22 of the Covenant. Article 22 of the Convention also covered trade unions. The Committee had received information that only one trade union was allowed in Nigeria, that trade unionists had been arrested for participating in strikes, that the National Labour Union executive councils had been dissolved and that the Government had permitted only one administrator, of its own appointment, for the national labour congress. He requested information on those matters.

31. Ms. EVATT said that the concerns expressed by the Committee at its previous session regarding the lack of legal guarantees and the replacement of the rule of law by the rule of military decree in Nigeria were unchanged.

32. She welcomed Nigeria's response to the concerns of the fact-finding mission and, in particular, the establishment of the National Human Rights Commission. However, she was concerned by its response to the allegation that members of the Civil Liberties Organisation had been prevented from attending the previous and current sessions of the Committee. She asked the delegation to state specifically whether the passports of Mr. Otteh and Mr. Obe had been impounded when they had tried to leave the country in early 1996 and whether they, or any other human rights representatives, had been arrested or deprived of their passports during the past few weeks.

33. She joined Mr. Bhagwati in requesting information on whether full, or only limited, appeals to the military tribunal were possible. The Nigerian response to the fact-finding mission did not cover all the questions asked by the mission or those of the Committee at its fifty-sixth session with regard to guarantees of fair trial, the right to representation and pre-trial detention. She asked how Nigeria had responded to the request of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on extrajudicial, summary or arbitrary executions to undertake a joint mission to Nigeria. The trials of 19 Ogonis, who were to have been tried in February 1996 on charges similar to those brought against Ken Saro-Wiwa, had been suspended pending consideration of the constitutionality of those trials; she asked whether there had been a ruling on the matter. She also asked what stage had been reached in the restoration of democracy in Nigeria, what progress had been made towards elections and whether the official timetable was being observed.

34. The oral presentation had added little to the information provided by the report on the situation of women in Nigeria, where there was still discrimination against women and few women held government positions. She assumed that that was the result of a decision by the military rulers and wondered whether there were any policies for the advancement of women in political and public life and whether any improvement was expected after the return to democracy. It was unclear whether there was any legal discrimination against women other than that mentioned in paragraph 169 of the report with regard to the acquisition of citizenship by marriage.

35. Nigeria had three types of marriage: statutory, customary and Islamic (CCPR/C/92/Add.1, para. 168). She asked at what age a woman could marry under each of those systems, since that was an important factor in free consent to marriage, and whether all three types of marriage gave husband and wife equal rights, particularly with regard to divorce and inheritance. She wondered in what way polygamy could be said to conform to the Covenant. She also requested information on the frequency of female genital mutilation and asked to what extent it contributed to the high rates of maternal and infant mortality and whether the women's organizations mentioned in the report had programmes to combat that practice. The report said that abortion was prohibited; she wondered whether that had led to a high rate of illegal abortions and, if so, whether they had had an effect on the maternal mortality rate.

36. The report provided information on prison regulations but had little to say about actual practice. Information received from NGOs spoke of overcrowding and a lack of food, water and medical attention. She requested information on the number of places in the national prisons, the number of prisoners and the number of deaths in custody and asked whether there had been any investigation of such deaths.

37. Mr. MAVROMMATIS said that throughout its 20-year existence, the Committee had been known for its impartiality. It was grossly unjust to claim that it was politically motivated or unfair to developing countries.

38. The Committee had been asked to postpone its comments until after the visit of the fact-finding mission, but the mission should have taken note of the work of the Committee rather than the reverse. While Nigeria was moving in the right direction, it should abolish the special tribunals, whose task could be carried out by the federal courts. Mr. Yadudu had understandably emphasized that reforms took time, but the country could still be expected to speed up its implementation of the Committee's recommendations. The Committee would like to receive an assurance that the suspended trials would not be resumed until courts existed which were capable of complying with article 14 of the Covenant.

39. Nigeria was a multi-ethnic country and, like other former colonies, it had suffered from internecine conflict, underdevelopment and other impediments to the enjoyment of rights and freedoms after the end of the colonial era. However, with regard to the statement that some of the decrees which the Committee had recommended for abrogation predated Nigeria's accession to the Covenant, all countries were expected to conduct a comparative study of their legal systems before ratifying any international instrument, in order to

determine whether to enter reservations or to make provision for implementation. If Nigeria had not done so, that could not be offered as an excuse for non-compliance.

40. Nigeria was to be congratulated on having established a National Commission for Women and a Ministry of Women's Affairs. One of the first things the new Commission should do was to inquire into the question of polygamy, which violated the dignity and equal rights of women.

41. Mr. EL SHAFEI said that while the head of the Nigerian delegation had provided some information on changes in Nigeria since the Committee's last session, it was still not clear when the promises by the current Government to review its laws would be fulfilled. The conclusions of the fact-finding mission despatched by the Secretary-General more or less confirmed those of the Committee at its last session and repeated its urgent recommendation that all the decrees establishing special tribunals or revoking normal constitutional guarantees of fundamental rights or the jurisdiction of the normal courts should be abrogated and any trials before such special tribunals immediately suspended. The fact-finding mission had pointed out that the Nigerian judiciary was not in a position to carry out its responsibility for human rights since its jurisdiction was curtailed both substantively and procedurally. He asked how the mission's recommendations had been received in Nigeria itself and what action the Government intended to take. One major action would be to designate a committee to examine the decisions of the military tribunals and to abrogate those decrees which encroached upon the rule of law. The persisting curtailment of freedom of association in Nigeria continued to be another major concern. The Military Government envisaged its rule as extending to 1998. It should start immediately to act on the recommendations of the Committee and of the fact-finding mission. The delegation had suggested that one of Nigeria's difficulties was its relations with the non-governmental organizations, but in fact cooperation with those organizations would be beneficial to both sides. Among positive developments, the delegation had mentioned the establishment of a National Human Rights Commission to investigate allegations of violations of human rights. He asked whether the Commission had already started its work, whether complainants could address it directly and what its rules of procedure were. He would like to know how many persons detained for political reasons were still being held.

42. Mr. BUERGENTHAL also welcomed the establishment of a National Human Rights Commission in Nigeria. He supported the delegation's request for assistance for the Commission from the Centre for Human Rights, and hoped that it would play a vital role in the development of human rights in Nigeria. One of the first items investigated should be the complaint made to the Committee that various members of a Nigerian NGO had been unable to attend its proceedings because their passports had been confiscated. Such action would be proof of the Commission's independence. He hoped it had already made contact with a number of NGOs and discussed with them Nigeria's report and their role in future submissions.

43. Nigeria was to be congratulated on having repealed the provisions concerning the appointment of serving military officers to special tribunals, in compliance with the demands of the Committee and the fact-finding mission. Had any action been taken in regard to the mission's further recommendation

that the victims of those tribunals should be compensated? All individuals sentenced by improperly constituted courts should be released forthwith. He joined previous speakers in expressing chagrin at the apparent harassment of NGOs in Nigeria and said that he would welcome an assurance that those responsible would be punished. He asked what decision had been taken in respect of the application of two special rapporteurs to visit Nigeria. He noted that it was hard to place any trust in the effective restoration of democracy when the winner of the last election was still in prison. His release and that of his supporters would be a first important step in that direction.

44. Mr. ANDO said that the fact that some decrees in Nigeria predated the country's accession to the Covenant was no excuse for failing to modify or repeal them where necessary. The country must have known what its obligations under the Covenant would be when it acceded to it.

45. There were a number of points on which he would like further information from the delegation. It was difficult to see how the judiciary could be truly independent under the Military Government. For example, according to paragraph 14 of the report, the amount of any ex gratia payment for the takeover of property was at the sole discretion of the Commander in Chief of the Armed Forces. It was questionable whether any judicial review was possible in such a case. With regard to equality of the sexes, he noted that efforts were being made to elevate the status of women. At the same time, however, the persistence of polygamy, as described in paragraph 168, raised important questions in regard to such matters as the right of inheritance, the respective status and responsibilities of the marriage partners and the legal status of the wife in the case of divorce. He would welcome more information on that subject, as well as on the acquisition of nationality as described in paragraph 169. The Nigerian delegation had claimed that the domestic regulations on prison conditions were broadly similar to the United Nations Standard Minimum Rules. At the same time, however, the report referred to economic difficulties precluding the implementation of those recommendations to their full extent. Again, he would like a further explanation. The material in the report in regard to article 27 of the Covenant gave some information on the situation of minorities in Nigeria. The difficulties encountered in that connection were perhaps understandable as being a legacy of colonialism, but that did not exempt Nigeria from fulfilling its obligations. He would like to know what concrete steps were being taken to overcome the difficulties, whether any progress had been made, and what goal had been set in order to find a permanent solution to the problem.

46. Mr. PRADO VALLEJO said that while some of Nigeria's social problems might be regarded as a legacy of colonialism, there were others profoundly affecting the life of the people that were not inherited from the colonial past. There existed in the country a repressive legal structure, based on a series of decrees, that had given rise to violence and permitted repression. The Decrees on State security, treason and other offences and civil disturbances, together with the Decree of 1994 establishing the supremacy of the Military Government, were fundamentally incompatible with the provisions of the Covenant and must be revised. As matters stood, civilians could be prosecuted by special tribunals for any opposition to the Government. Secret trials had been held, at which opponents of the Government had been condemned to

death, and political detainees were regularly subjected to torture and maltreatment. In 1995, the situation had been so grave that the United Nations General Assembly had condemned Nigeria for violations of human rights. Steps must be taken to end a situation of impunity that would be intolerable in any country. The picture presented in the fact-finding mission's report was especially intolerable in a signatory to the Covenant. Although the letter sent by the Special Adviser to the Head of State of Nigeria, currently the head of the Nigerian delegation, in response to the report had drawn attention to certain positive developments, much remained to be done. It was not clear by whom the process of judicial review would be carried out and what powers the competent body would have. The letter also said that all persons currently being detained without trial would shortly be released on the basis of an assessment of the individual merits of each case. According to the Covenant, however, persons detained without trial must be released immediately and, once released, were entitled to receive compensation. Decree No. 2 of 1984 which allowed for imprisonment without trial needed to be abrogated altogether rather than amended.

47. Lord COLVILLE said that he had been glad to hear of the steps that had been taken since the previous session, partly as a result of the Committee's own comments and partly because of the findings of the United Nations mission. It would be helpful to the Committee if copies of the new decrees that the head of the Nigerian delegation had referred to could be deposited with the secretariat. He welcomed the presence of a number of members of the new Human Rights Commission of Nigeria and hoped that they would receive as much assistance as possible from the international community. He also hoped that, after listening to the Committee's proceedings, they would understand its concern about the state of affairs in their country. One task the Commission might undertake would be to investigate the proper steps to be taken in order to compensate the families of those who had been executed in November 1995, as recommended in section VII of the report of the fact-finding mission.

48. He understood that the Government had repealed the 1994 Decree adding a section to article 2 (a) of the 1984 Decree providing for executive detention - a section to the effect that, notwithstanding the provisions of the 1979 Constitution to the contrary, no writ of habeas corpus, order of prerogative or other order of any court, should be issued for the production of any person detained under that Decree. He believed, however, that article 4 (2) of the 1984 Decree itself was still in force, stating that chapter IV of the 1979 Constitution of the Federal Republic (which was the part containing all fundamental rights) was suspended for the purposes of the Decree, and that any question whether any provision thereof had been, or was being, or would be, contravened by anything done or proposed to be done in pursuance of the Decree should not be inquired into in any court of law. The mere repeal of the 1994 provision, therefore, did not greatly amend the situation. He would ask the head of the delegation to confirm whether that was indeed the situation and to comment on it.

49. Some of those proceeded against under Decree No. 2 of 1984 had been executed, but 19 persons remained in custody. The Committee and the fact-finding mission had recommended the suspension of proceedings against those persons. Nigeria should inform the Committee what action it intended to take in their regard. It would be useful to know whether the proposed measure

providing the right to appeal against the terms of that decree would apply retrospectively, since proceedings against those 19 persons would have been initiated before its enactment. It would also be useful to know who would constitute the membership of the appeal tribunal, and whether any appeal could be lodged against conviction as well as sentence. What powers would such a body enjoy, especially with regard to the Civil Disturbances Act of 1987? Would it be empowered to order a stay of any sentence passed by a special tribunal?

50. If, however, the 1984 Decree and the Civil Disturbances Act were not to be abrogated, in the future a decision would have to be taken as to whether to invoke the Civil Disturbances Act in certain circumstances. What in fact had been the reason for choosing not to conduct the trial of Ken Saro-Wiwa and others in the civil courts? Furthermore, the fact-finding mission had criticized the tribunal that had convicted Mr. Saro-Wiwa and others on the grounds that no preliminary investigation had been conducted. If and when Nigeria invoked the Civil Disturbances Act, it would be useful to know whether preliminary investigations would be conducted, and whether the proceedings would be published.

51. The report of the fact-finding mission had also noted that under Decree No. 2 of 1984, two members of the Petroleum and Gas Workers Union and Staff Association had been detained without charge since August 1994. It would be interesting to know how, in the view of the Nigerian Government, that action was consistent with article 22 of the Covenant.

52. Finally, the Nigerian delegation should clarify whether the Standard Minimum Rules for the Treatment of Prisoners applied to those held both in prisons and in military camps. What remedies were available to those who wished to lodge complaints? Could such complaints be taken up before the courts?

53. Mr. BRUNI CELLI said that he shared the concerns expressed by other members. He would confine his remarks to a discussion of the right to life, with regard in particular to the terms of article 6 of the Covenant and section 30 of the Nigerian Constitution. Since the annulment of the 1993 elections, there had been a significant increase in the number of death sentences and executions. During 1994 alone, approximately 100 persons had been publicly executed by firing-squad. By late 1995, nearly 100 more had been executed, and 46 more had been sentenced to death. And yet the terms of the Covenant were clear: the general comment on article 6, the Committee's decisions concerning cases that came before it under the Optional Protocol and the Committee's concluding observations to States parties all indicated beyond a doubt that the death penalty could only be seen as not violating article 6 if all the terms of article 14 had been fulfilled. It was also clear that the special tribunals did not fulfil the terms of that article. What measures had been envisaged by the Nigerian Government to resolve that violation?

54. But the death penalty was not the only problem. Reliable non-governmental sources indicated that extrajudicial executions, and the abuse of force by security forces, had resulted in many deaths. They also indicated that in 1991, over 5,300 detained persons had died from a lack of clean drinking water, medicine, food, and sanitation.

55. The two amendments to the Civil Disturbances Act described in Mr. Yadudu's letter to the Secretary-General, dated 21 May 1996, seemed timid, indeed. Nigeria should describe what further measures it had taken to fulfil its obligations under article 6.

56. Mr. BAN inquired whether individuals had the right to bring their complaints before the new National Human Rights Commission, and if so, whether that right was retroactive. What were the Commission's powers and were they enforceable? It would be useful to know the relationship between the Nigerian court system and the Commission.

57. Paragraph 5 of the report indicated that the Ratification and Enforcement Act had been adopted to promulgate the African Charter of Human and People's Rights. But no such legislation had been adopted to incorporate the Covenant into national legislation. Why had those two human rights instruments been treated differently?

58. It seemed that Nigeria's emergency legislation failed to comply fully with the terms of the Covenant. The Nigerian delegation should inform the Committee whether a state of emergency had been declared under the current regime, and if so, whether the Secretary-General had been duly notified in accordance with the terms of article 4. What rights guaranteed by Nigerian law could be derogated from when a state of emergency was declared? He was troubled by the statement about emergency measures in paragraph 30 of the report: were such measures taken formally under a declared state of emergency, or were they simply carried out by local military units?

59. In its consideration of the reports of other States parties to the Covenant, the Committee had sometimes found that a federal government structure gave rise to difficulties of enforcement. That might also be the case with Nigeria. Although, for example, Nigerian legislation prohibited the selling of daughters into marriage, that practice persisted. He had been impressed to learn that Nigeria had co-sponsored a resolution at the Forty-sixth World Health Assembly calling for the elimination of such harmful health practices as the mutilation of female genitals. He inquired why, in the view of Nigeria, certain of its laws had been unenforceable.

60. He was uncertain whether Nigerian media legislation, which conferred on the President himself the power to grant or refuse newspaper licences, complied with the terms of the Covenant. It would be useful to know if the refusal to grant a newspaper licence could be challenged before the courts.

61. Finally, he inquired how many political parties existed in Nigeria. General Abacha had apparently declared, on 17 August 1995, that individuals and groups could in future canvas political ideas, but not form political parties. The Nigerian Government should explain that statement.

62. Ms. MEDINA QUIROGA urged the Nigerian delegation to contact its Government immediately and inquire as to the situation of Mr. Obe and Mr. Otteh, of the Nigerian Civil Liberties Organisation. Although she welcomed news of measures taken after April 1996, Nigeria's letter to the Secretary-General indicated that those reforms were not sufficiently broad. While Decree No. 2 of 1984 was to be abolished, restoring habeas corpus,

persons could apparently still be detained without charge for renewable periods of months. The Treason and Other Offences (Special Military Tribunal) Decree, of 1986, the Robbery and Firearms Special Provisions Decree of 1984 and the Federal Military Government (Supremacy and Enforcement of Powers) Decree of 1994 were still in force, all of which violated the terms of the Covenant.

63. Aside from the shortness of time, the reasons given by Nigeria for its failure to comply with the Covenant did not hold up. The fact that the decrees in question predated its accession to the Covenant was irrelevant: once a State ratified a Covenant, it was obliged to comply with its terms. If any legal provisions contravened those terms, they must be abolished. Another reason cited was historical necessity: military Governments always employed such methods. The Covenant, however, did not permit States parties to have military Governments; under its terms their Governments must be democratically elected.

64. With regard to section II (a) of the list of issues, much had been made of the Constitution of 1989. And yet, under Decree No. 107 of 17 November 1993, it appeared that any constitutional provisions could be overridden at any time by the enactment of a decree. In reply to section I (c) of the list of issues, the Nigerian delegation had suggested that the Committee was not impartial. She strongly objected to that statement and invited the Nigerian delegation to attend the meetings of the Committee when the reports of other States parties were under consideration. Nigeria had also stated that the Committee based its determinations on questionable information sources and suggested that it should rely on State sources instead. And yet, in reply to (d), (f) and (g) of the list of issues, the State had provided no information. With regard to (d), she shared the concerns raised by Ms. Evatt. The sole information provided concerning gender equality appeared in paragraphs 167-169 of the report, which set forth the various types of marriage that could be contracted in Nigeria, but offered no explanation of what those categories meant.

65. The Nigerian Government had said that no state of emergency had been declared in Nigeria since its ratification of the Covenant. Under the terms of the Covenant, if a state of emergency was formally declared, certain rights could be derogated from. It was therefore all the worse that the rights of the Nigerian people had been suspended without such a declaration.

66. Mrs. CHANET said that she agreed with Mr. Klein that the response of the Nigerian Government concerning the situation of Mr. Obe and Mr. Otteh was inadequate. In her view, the reply was contradictory: on the one hand, the Government had said that nothing had happened, and on the other, it had indicated that it would open an investigation.

67. The credibility of the Committee and of the independent information sources on which it relied should not be called into question: it would be more fitting to question the peremptory, systematic refusal to acknowledge offers of information. The establishment of the National Human Rights Commission was certainly welcome, in particular if its mission was to

investigate human rights violations. However, for a country undertaking a transition from military rule to democracy, steps must first be taken to guarantee the rule of law.

68. With regard to article 9 of the Covenant, the report contained no mention whatever of the various decrees discussed earlier. She was uncertain whether Decree No. 14 of 1994 - which abolished the portion of Decree No. 2 of 1984 concerning habeas corpus - or Decree No. 1 of 1996 - which abrogated the 1994 Decree and part of the 1984 Decree - had been published. The Nigerian Government should supply the Committee with all pertinent juridical texts so that it could determine which parts of the 1984 Decree were currently in force. The part of the 1984 Decree which provided that any person could be subject to a three-month renewable detention, without an order from a judicial authority, and that such detention could be carried out in any location chosen by the detaining authority, appeared to be still in force. Nigeria should inform the Committee if such was in fact the case. She shared the view of Mr. Klein with regard to the 1993 Decree, which seemed not to have been abrogated. The Nigerian Government should confirm whether the Treason and Other Offences (Special Military) Decree of 1986 had in fact been abolished, and provide a copy of the text of the relevant decree, which apparently stipulated that civilians would no longer be tried by the military courts. It was also crucial to know the nature of the right of appeal. Did it allow for the review of both conviction and sentence? Did it apply to the death penalty? Finally, Nigeria should confirm whether the Special Tribunal (Offences Related to Civil Disturbances) Edict of 1994 had in fact been abrogated, or if such action was envisaged.

The meeting rose at 1.05 p.m.